

Issue: Income Earned in Illinois/Individual Residency  
Non-Filer (Income Tax)

2. On May 24, 1990, pursuant to Section 6103(d) of the Internal Revenue Code, the Department of Revenue received information from the Internal Revenue Service (Dept. Ex. #2), indicating that the federal

adjusted gross income of these taxpayers for the 1987 tax year was \$76,589.00.

3. By process of a federal tape match with Department records, it was determined that no IL-1040 for XXXXX, under the social security numbers applicable to them, had been filed for the like year.

4. As a result of such finding, the Illinois Department of Revenue caused to be issued on November 29, 1990, a Notice of Deficiency, proposing assessments against these individuals for failure to file returns, as well as applicable penalties as accorded by statute. 35 ILCS 5/1001; 35 ILCS 5/1005. All of the proposed deficiencies were calculated utilizing the taxpayer's adjusted gross income as reflected on their US 1040 for the 1987 tax year.

5. At hearing, taxpayer's accountant presented what purported to be a carbon copy of taxpayer's federal and Illinois income tax returns for the tax year ending 12/31/87. Said taxpayers were granted an additional 7 days to submit a copy of the cancelled check or other definitive evidence of payment on the Illinois return in corroboration of the purported return.

6. Notwithstanding the period of time given to produce adequate proof of payment, taxpayers failed to appear at the subsequent hearing date set and failed to produce any cancelled check or any other indicia of proof showing or tending to show that the Illinois taxes due were in fact paid for the 1987 year.

7. The exhibits that were submitted on the initial hearing date did establish that the Notice of Deficiency did not allow an applicable credit for additionally withheld taxes in the amount of \$794.00. It also did not allow a proper credit for a subtraction modification in the amount of \$866.00 for real estate taxes paid on their principal residence.

8. Taxpayer's withholding exceeded 90% of the total tax due as shown on State W-2 forms.

CONCLUSIONS OF LAW: Section 502 of the Illinois Income Tax Act, 35 ILCS 5/502 requires persons who are residents of the State to file returns for the year of residency and to pay taxes due on income earned. For failure to abide by the provisions thereof, the Act institutes specific penalties, namely Sections 804; 1001; 1002(a); and 1005.

From the evidence of record, I conclude that no sufficient evidence was produced which proved or tended to prove that a return was filed or that payment was made for Illinois income taxes for the 1987 year. Although what purports to be a copy of the 1987 return was submitted, the fact that taxpayers could not produce a cancelled check nor any other indicia of proof in evidence of payment tends to diminish the credibility of their assertion that a return was in fact filed.

I also concluded, due to the absence of an adequate evidentiary basis, that the failure to file a return and to pay taxes due is not due to any demonstrable reasonable cause and is therefore negligent. However, since withholding exceeds 90% of the taxes found to be due, imposition of any penalty under Section 804 of the Act (35 ILCS 5/804 would be inappropriate in this cause.

It is therefore recommended, on the basis of the evidence submitted, that the Notice of Deficiency issued against these taxpayers on November 29, 1990 be upheld with the exception of a subtraction modification in the amount of <\$866> for real estate taxes and a subtraction modification for additional income withheld in the amount of <\$794>. Applicable penalties under Section 1001, 1002(a) and 1005 should be imposed, together with interest as accrued under law.

Dennis L. Karns  
Administrative Law Judge